IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No. 826 of 2004

Smt. Lalbi Karim Bagwan .. Appellant
V/s.
Shri Allabax Appalal Bagwan .. Respondent

Mr. R.S. Ghadge for the Appellant
Mr. N.V. Bandiwadekar for the Respondent

CORAM : P.V. KAKADE, J.
DATED : 24.06.2005

P.C.:-

1. The Appellant has filed the present Appeal against the judgment and order passed by the 5th Ad-hoc. Additional District Judge, Kolhapur dated 5.3.2004, whereby order of the Lower Court dismissing the Suit of the Plaintiff came to be confirmed.

2. The Plaintiff had filed Suit for declaration and permanent injunction against Defendants alleging that the Defendant had taken advantage of she being an uneducated pardashin Muslim lady, obtained her thumb impression on the document of sale of the suit premises and got executed bogus sale deed on 5.6.1991 and therefore, it was alleged that the impugned sale deed was illegal and therefore, was not binding upon the Plaintiff and, therefore, Suit for declaration came to be filed. The Defendant challenged the Suit on various grounds including it was barred by limitation. The Defendant also denied all the allegations made by the Plaintiff and prayed for dismissal of the Suit.

The learned Judge adjudicated on the merits and came to the conclusion that the Plaintiff had failed to establish the alleged fraud committed by the Defendant and therefore, non-suited the Plaintiff. The Trial Judge also came to the conclusion that the Suit was barred by law of Limitation. The Appeal was carried to the District Court, Kolhapur. The learned Additional District Judge after hearing both the parties inter-alia came to the conclusion that the Suit was barred by law of Limitation as she had failed to prove the said allegation made in the Suit, hence the present Appeal.

3. At the outset, it may be noted that the only question of law involved in this Appeal round which the entire controversy revolves is whether the Suit is barred by law of limitation. The Plaintiff obtained extract of property register card on 11.6.1993. Name of the Defendant was entered on 2.6.1993 into the said property register. It is the case of the Plaintiff that she came to know for the first time about the said entry on 10.12.1995 when she lodged complaint to the police station and secondly on 2.12.1995 when she had issued notice to the Defendant, however the entry on record is sufficient to establish that the sale deed was executed on 5.6.1991 and therefore, any declaration which was sought in that regard to challange it’s validity and legality was required to be filed within three years. However, by virtue of article 58 of the Limitation Act,

the period of limitation would be of three years from the date her right to sue accrued in favour of the Plaintiff. Now evidently the right to sue accrued in favour of the Plaintiff when she came to know that the Defendant's name was entered into the City Survey record on 2.6.1993 and not on 10.12.1995 as alleged by her.

4. It is submitted on behalf of the Appellant that one Velikhan had brought the City survey extract, who received it on 11.6.1993, of which Plaintiff had no knowledge, however, this aspect is not established due to the omission on behalf of the Plaintiff to examine the said Velikhan as her witness to support her contention that she did not know anything about the entry of the name of the Defendant in City survey record on 2.6.193 and therefore, in absence of any such evidence, I hold that the Suit is clearly barred by article 58 of the Limitation Act. Both the Courts below have rightly come to the conclusion that the Suit is so barred and once it is held, then I need not go into the other aspects as those are issues of facts, which can not be considered.

Moreover, the Apex Court has held that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court.

5. In the present case before us, evidence including pertaining to issue of limitation is properly appreciated by both the Courts below. As such, no interference is called for. In the result, Appeal stands dismissed. Civil Application No. 950 of 2004 also stands dismissed.

(P.V. KAKADE, J.)